

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own D.T.E.
Motion into the Appropriate Pricing, based upon Total Element Long-Run 01-20
Incremental Costs, for Unbundled Network Elements and Combinations of
Unbundled Network Elements, and the Appropriate Avoided Cost Discount for
Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the
Commonwealth of Massachusetts

**Motion by fairpoint Requesting the Department to Establish
Reduced Charges for Unbundled Network Elements as an incentive to competition
in underserved suburban and rural (Tier III and Tier IV) verizon markets**

I. Introduction.

A. UNE Rates and Retail Rates Must Be Considered in Tandem.

FairPoint Communications Solutions Corp. respectfully requests that the Department reduce the recurring charges that competitive local exchange carriers ("CLECs") must pay Verizon Massachusetts to obtain access to unbundled network elements ("UNEs") and combinations of UNEs, including the UNE Platform ("UNE-P"), to levels that that would encourage and sustain entry by competitive local exchange carriers ("CLECs") into Tier 3 and Tier 4 markets currently underserved by Verizon and the developing CLEC industry in Massachusetts. FairPoint further requests that such reductions be made prior to Verizon's authorization under Section 271 for permission to enter the long distance market.

Just as critically, FairPoint lastly requests that the Department ensure that Verizon's retail rates in all markets, especially its Tier 3 and Tier 4 markets, never fall below its TELRIC rates. In some jurisdictions across the country, ILECs are able to keep CLECs at bay in outlying markets simply by pricing their retail services below cost--a maneuver the ILECs can afford to make by virtue of their capacity to subsidize their rural and semi-rural operations through their operations in higher margin major metropolitan markets.

B. The "Digital Divide": The Department Must Be Sensitive to the Realities of Competition in Tier 3 and Tier 4 Markets.

As other parties, such as AT&T and WorldCom have able demonstrated before the FCC, Verizon's Massachusetts UNE rates, especially its UNE loop rates, remain excessive and

still do not permit competitive entry. As an emerging facilities-based carrier, which provides dial-tone via its own switching facilities, but which must collocate with the ILEC and lease the ILEC's local loop in order to reach the customer, FairPoint emphasizes that the single greatest barrier to entry in markets subject to UNE rate deaveraging is a monthly recurring loop rate which remains too high. As FairPoint has argued before the Federal Communications Commission ("FCC"), UNE loop rates in many jurisdictions pose a nearly insurmountable barrier to UNE-based competition for services to customers resident in so-called Tier 3 and Tier 4 markets, which are generally defines as those markets located outside of major metropolitan markets, i.e., suburban and rural markets located outside of a Top 50 Metropolitan Statistical Area ("MSA"). FairPoint strongly urges the Department to take an aggressively proactive stance towards this issue so that consumers across Massachusetts can realize the full benefits intended under the Telecommunications Act of 1996, which seeks to bring advancements in telecommunications technology to *all* consumers, especially those who, merely by virtue of their residency outside of a major metropolitan area, currently stranded on the other side of the "digital divide".

II. discussion.

A. UNE Rates Must be Reduced to pro-Competitive Levels Before Verizon Obtains Section 271 Approval for Massachusetts.

As the Department has recognized, Verizon is not entitled to Section 271 approval unless and until it can show that the Massachusetts local exchange market is "irreversibly open to competition." *Department's 271 Evaluation*⁽¹⁾ at 1, 408 (Oct. 16, 2000); *Department's 271 Reply Comments*⁽²⁾ at 1 (Nov. 3, 2000). Consistent with this requirement, Chairman Connelly recently emphasized the Department's commitment "to continue to promote the policy it adopted in 1985 - namely, to promote intraLATA competition in order to benefit Massachusetts consumers and the State's economy." *Letter from James Connelly to the FCC*, dated December 1, 2000. Massachusetts consumers will not realize the benefits of intraLATA competition unless and until the Department establishes UNE rates that sustain long-term competitive entry into all markets across the Commonwealth. FairPoint urges the Department to be mindful, not only of Massachusetts' already-crowded "big city" markets, but of its small and medium-size communities in outlying areas as well.

B. Existing UNE Rates in Massachusetts Stifle Competition.

Competition in the local exchange marketplace cannot be sustained unless UNE rates are set at a level that will allow CLECs to offer facilities-based services at competitive rates while also enabling them to more than cover their costs. Current recurring charges for UNEs in Massachusetts are so high that full-scale UNE-based entry into the local exchange market by CLECs is simply not economically viable. Unless and until UNE rates are modified, CLECs will be improperly disadvantaged, and Massachusetts consumers will not experience the benefits of robust local exchange competition.

1. Verizon's Loop Rates are Too High.

Such parties as AT&T and WorldCom have shown, in filings with Department and the FCC, that Verizon's existing UNE loop rates for Massachusetts are excessive to the point that they pose a nearly insurmountable hurdle to competitive entry into the Commonwealth. In fact, the loop rates originally set in 1996 remain in effect today. Verizon has made no move to reduce them.

Loop rates, like all other UNE rates set by the Department, are substantially too high in Massachusetts in part because they are based on flawed assumptions as to Verizon's cost of capital. FairPoint concurs with AT&T's March 2000 UNE rate petition, which demonstrated that the Department's final cost of capital assumption was based on two key errors.

First, as set forth in AT&T's petition, the Department assumed a very high cost of equity capital. In its Phase 4 Order in the *Consolidated Arbitrations* docket, the Department adopted a cost-of-capital methodology that produced a cost of equity capital equal to 11.38 percent. Subsequently, the Department chose to put aside the methodology it had previously adopted and selected 13.5 percent as the cost of equity capital for the purpose of calculating UNE rates. It has not been shown, however, that the latter percentage comports with TELRIC principles.

Second, the Department adopted a debt-to-equity ratio of 23.51 percent to 76.49 percent. The average debt-to-equity ratio in the other nine Bell Atlantic states that have made UNE rate decisions is approximately 40/60, a ratio that would comport with TELRIC. The result of the 23.41 to 76.49 ratio is that all of Verizon's Massachusetts UNE rates, including its loop rates, are substantially in excess of TELRIC levels.

Furthermore, if improperly low utilization factors and improperly high assumed costs for inputs such as poles, network interconnection devices, and cable are corrected, the average rate for two-wire analog loops should be reduced by approximately 56 percent from current levels.

2. UNE Rate Deaveraging Must not deter competition in suburban and rural markets.

All of Verizon's Massachusetts UNE rates, especially its loop rates, need to be revised in order to be made TELRIC compliant and to enable competitive entry. Most importantly, FairPoint cannot emphasize strongly enough that in developing deaveraged UNE loop rates, the Department must strive not to prejudice CLECs which, like FairPoint, are exclusively focused on serving consumers in smaller markets. In this regard, FairPoint's perspective may be somewhat unique, however, the so-called "digital divide" will not be bridged unless policies are put in place to encourage and sustain the development of the Commonwealth's telecommunications infrastructure across all markets.

Specifically, FairPoint requests that the Department revise its approach to deaveraging as follows. First, it should that loops of comparable length are priced the same, regardless of whether those loops are deployed in area otherwise currently labeled as "urban," "metropolitan," "suburban," or "rural." Thus, a six thousand foot loop deployed in an urban area, should not be priced lower than a six thousand foot loop deployed in a rural area. Second, the Department should treat discrete communities with similar population densities on an equal basis. For example, if the population density of the city center of Pittsfield, Massachusetts compares to the population density of an office park located within or in close proximity to Boston, the UNE loop rates specific to both locales should be the same. UNE pricing structures which run counter to the aforementioned principles only serve to disadvantage CLECs, and potential CLEC customers, especially businesses which are located in smaller towns. FairPoint acknowledges that loops of extraordinary length are required to serve isolated farmhouses and other residences in many rural areas. However the businesses that serve those residential customers are most often clustered together, in the nearest town, in relatively close proximity to the ILEC's serving wire center. To illustrate, FairPoint is currently seeking to establish a presence in the following Tier III and Tier IV markets across Massachusetts: Pittsfield, Fall River, Plymouth, New Bedford, Taunton, Springfield, Greenfield, Westfield, Worcester, Leominster, Fitchburg, Middleboro, Northampton, Holyoke, and Southbridge. These towns contain relatively small, discrete but thriving business communities which are badly in need of modernized telecommunications services of the kind that only full and fair competition will provide, but they can be subject to nonsensical UNE rates merely by virtue of their presence within a larger area designated as "suburban" or "rural." These and similar communities, i.e., discrete, incorporated communities with populations ranging from 10,000 to approximately 100,000 should be redesignated as "urban" or "suburban" for purposes of calculating deaveraged UNE loop rates. To give a concrete example, Fall River has a population in the area of 90, 300 (Rand McNally Road Atlas, Deluxe Edition, 2000.) This is a sizable town from the standpoint of population and population density. Yet the monthly recurring UNE loop rate for Fall

River is the highest in Commonwealth, at \$20.04. This is nearly three times the urban rate. Yet the discrete community served by FairPoint within Fall River compares to communities located within markets otherwise considered to be "urban." Unlike unincorporated areas with diffuse populations, Fall River should not be considered rural for loop deaveraging purposes. It would, in fact, be more appropriate to consider Fall River as urban. In any event, rural loop rates should be capped at a maximum of two times the urban rate.

C. The Department Must Ensure that Verizon's Retail Rates Never Undercut its Wholesale Rates.

The Department must, in any event, make sure that Verizon's retail rates are never below cost in any market. Under the price cap plan now in place, it is possible for Verizon to charge retail rates that are *less* than the total price of the network elements competitors must purchase to offer the same retail service. Competition is simply dead on arrival under such circumstances.

As other parties have shown in previous filings, Verizon's retail rates do not even comply with the Department's existing price floor requirements. On August 24, 2000, Verizon made a revised price floor filing, pursuant to directives in the Department's August 3, 2000, order, D.P.U./D.T.E. 94-185-E ("Price Floor Order"). In the Price Floor Order, the Department directed Verizon to make certain changes to the price floor calculations that it had filed on November 2, 1998. In filings with the Department in D.P.U./D.T.E. 94-185 on September 12, 2000, and on October 24, 2000, AT&T, for example, has demonstrated that Verizon's August 24 filing was faulty in multiple regards.

FairPoint joins with other parties in urging the Department to establish a proceeding to consider a price cap plan that will allow Verizon pricing flexibility, while at the same time creating a relationship between wholesale and retail rates that does not smother facilities based competition while still in its infancy. *It is especially critical that the Department craft a UNE pricing regime that absolutely prohibits Verizon from subsidizing its suburban and rural operations vis-à-vis its urban and metropolitan operations.*

The Department is on record as stating that the "suggestion that the Department convene a working group or technical session to begin discussion of the form of alternatives that will replace the price cap is well taken." See DTE 00-101, *Interlocutory Order on Suspension of Verizon Massachusetts' Sixth Annual Price Cap Compliance Filing* (December 14, 2000). FairPoint respectfully suggests that the time is ripe for this discussion to be brought to fruition.

III. Conclusion.

Reduced UNE rates are crucial to the emergence and continued development of facilities-based competition in Massachusetts. FairPoint respectfully asks the Department to refuse Verizon's 271 application until such time as fully TELRIC-compliant rates have been established for all UNEs, and CLECs have had an opportunity to gain solid footholds in their target markets in view of those rates. More specifically, FairPoint urges the Department to reconsider its approach to UNE rate deaveraging, taking into account that the population density in small to medium size towns may approach that of major metropolitan areas, even in the smaller town are located within rate zones otherwise labeled as "suburban" or "rural." (FairPoint offers Fall River, Massachusetts as a case-in-point.) Lastly, FairPoint also urges the Department to address the need to ensure that Verizon's retail rates do not undercut their wholesale rates to the detriment of would-be CLEC competitors.

Respectfully submitted,

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1. ¹ "Evaluation of the Massachusetts Department of Telecommunications and Energy," *In the Matter of Application of Verizon New England, Inc., et al., for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Massachusetts*, CC Docket No. 00-176 (filed October 16, 2000).

2. ² "Reply Comments of the Massachusetts Department of Telecommunications and Energy," *In the Matter of Application of Verizon New England, Inc., et al., for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Massachusetts*, CC Docket No. 00-176 (filed November 3, 2000).